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Merchants Glass Distributors, Inc. and Glass Warehouse Workers and Paint Handlers Local Union 206, International Brotherhood of Painters and Allied Trades, AFL-CIO. Case 29-CA-18292

February 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed by the Union on June 6, 1994, the General Counsel of the National Labor Relations Board issued a complaint on July 26, 1994, against Merchants Glass Distributors, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 6, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On February 8, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 10, 1995, notified the Respondent that unless an answer were received by January 24, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation, with its principle office and place of business located at 330 Hendrickson Avenue, Lynbrook, New York, has been engaged in the wholesale distribution of glass. During the 12 months preceding issuance of the complaint, the Respondent purchased and received at its Lynbrook facility glass and supplies valued in excess of \$50,000 directly from suppliers located within the State of New York, which suppliers, in turn, purchased and received the glass and supplies from suppliers located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time cutters, feeders, selectors, sandblasters, designers, carvers, acid etchers, chippers, plate and window glass handlers, cleaners, automobile glass installers, checkers, glass warehouse workers, packers chauffeurs, order pickers, glass cleaners, glass fabrications, tempering glass, laminating glass, insulating glass and plastic workers, mirror painters, glass washers, paint handlers, silk screen workers, glass sign workers, pattern-taking maintenance men, embossing, bevelers, mitre cutters, silverers, polishers, grinders, pattern cutting and cutters, computerized glass table operators, and all other inside and outside employees who handle glass and allied workers, including drivers, helpers in delivery operations to and from all sites and, in addition, including also hoisting, loading and unloading of boxed and loose glass and all materials and incidental and/or related operations to the above listed classifications, excluding all guards and supervisors within the meaning of the Act.

Since on or before 1980, and at all times material, the Union has been the exclusive collective-bargaining representative of the employees in the unit described above, and, since on or before 1980, the Union has been recognized as such by the Respondent. Such recognition has been embodied in successive collective bargaining agreements between the Union and Window and Plate Glass Dealers Association of New York,

Inc., of which the Respondent is a member and to which the Respondent is a signatory, the most recent of which is effective from April 1, 1993, to March 31, 1997.

At all times on or before 1980, the Union by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about June 3, 1994, the Respondent laid off seven out of eight of the unit employees.

The subject of layoff of employees relates to rates of pay, wages, hours of employment, and other terms and conditions of employment in the unit described above and is a mandatory subject of bargaining.

The Respondent engaged in the acts and conduct described above without prior notice and without having afforded the Union an opportunity to negotiate and bargain over the decision and effects of those layoffs, as the exclusive collective-bargaining representative of the unit employees.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by laying off unit employees on or about June 3, 1994, without notice to or bargaining with the Union, we shall order the Respondent to offer the unit employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondent to expunge from its files any reference to the layoffs and notify the employees that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Merchants Glass Distributors, Inc., Lynbrook, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Glass Warehouse Workers and Paint Handlers Local Union 206, International Brotherhood of Painters and Allied Trades, AFL-CIO as the exclusive collective-bargaining representative of the unit employees by laying off employees without prior notice to the Union and without affording the Union an opportunity to bargain over the decision and effects:

All full-time and regular part-time cutters, feeders, selectors, sandblastors, designers, carvers, acid etchers, chippers, plate and window glass handlers, cleaners, automobile glass installers, checkers, glass warehouse workers, packers chauffeurs, order pickers, glass cleaners, glass fabrications, tempering glass, laminating glass, insulating glass and plastic workers, mirror painters, glass washers, paint handlers, silk screen workers, glass sign workers, pattern-taking maintenance men, embossing, bevelers, mitre cutters, silverers, polishers, grinders, pattern cutting and cutters, computerized glass table operators, and all other inside and outside employees who handle glass and allied workers, including drivers, helpers in delivery operations to and from all sites and, in addition, including also hoisting, loading and unloading of boxed and loose glass and all materials and incidental and/or related operations to the above listed classifications, excluding all guards and supervisors within the meaning of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer the laid-off unit employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, as set forth in the remedy section of this decision.

(b) Expunge from its files any and all references to the layoff of the employees, and notify the employees, in writing, that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-

cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Lynbrook, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 1995

William B. Gould IV, Chairman

James M. Stephens, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Glass Warehouse Workers and Paint Handlers Local Union 206, International Brotherhood of Painters and Allied Trades, AFL-CIO as the exclusive collective-bargaining representative of the unit employees by laying off employees without prior notice to the Union and without affording the Union an opportunity to bargain over the decision and effects:

All full-time and regular part-time cutters, feeders, selectors, sandblastors, designers, carvers, acid etchers, chippers, plate and window glass handlers, cleaners, automobile glass installers, checkers, glass warehouse workers, packers chauffeurs, order pickers, glass cleaners, glass fabrications, tempering glass, laminating glass, insulating glass and plastic workers, mirror painters, glass washers, paint handlers, silk screen workers, glass sign workers, pattern-taking maintenance men, embossing, bevelers, mitre cutters, silverers, polishers, grinders, pattern cutting and cutters, computerized glass table operators, and all other inside and outside employees who handle glass and allied workers, including drivers, helpers in delivery operations to and from all sites and, in addition, including also hoisting, loading and unloading of boxed and loose glass and all materials and incidental and/or related operations to the above listed classifications, excluding all guards and supervisors within the meaning of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer the seven unit employees we laid off on or about June 3, 1994, immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct.

WE WILL expunge from our files any and all references to the layoff of the employees, and notify the employees, in writing, that this has been done.

MERCHANTS GLASS DISTRIBUTORS, INC.